

# **Exhibit F**

The Honorable Jamal N. Whitehead

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

ENCOMPASS INSURANCE COMPANY,  
as subrogee of Stephen and Stephanie Phillips,

Plaintiff,

vs.

NORCOLD, INC., a foreign corporation,

Defendants.

No. 2:23-cv-00231-JNW

DECLARATION OF TODD M. FOSS IN  
SUPPORT OF DEFENDANT NORCOLD  
LLC F/K/A NORCOLD INC.'S MOTION  
FOR SANCTIONS FOR SPOILIATION OF  
MATERIAL EVIDENCE

I, Todd Foss, declare that:

1. I am one of the attorneys representing Defendant Norcold LLC f/k/a Norcold, Inc. ("Norcold") in the above-captioned lawsuit. I am a licensed attorney in the State of Texas and am in good standing with the State Bar of Texas.

2. On March 16, 2023, the Court granted my Application for Leave to Appear Pro Hac Vice [ECF No. 13]. I have read Norcold's Motion for Sanctions for Spoliation of Material Evidence (the "Motion") and am familiar with its contents.

3. Norcold first received notice of the subject fire made the basis of this lawsuit when it received a letter correspondence from Plaintiff Encompass Insurance Company, as

DECLARATION OF TODD M. FOSS - 1



WILSON  
SMITH  
COCHRAN  
DICKERSON

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1 Subrogee of Stephen and Stephanie Phillips’s (“Plaintiff”) counsel. The letter from Plaintiff’s  
2 counsel was transmitted via facsimile on June 23, 2021. In addition to providing notice of the  
3 subject fire, the letter also informed Norcold that a lab inspection was scheduled to occur the  
4 following week at Jensen Hughes, 23109 55th Avenue West, Mountlake Terrace, Washington  
5 98043.  
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7 4. On June 29, 2021, a one-day laboratory examination was conducted of evidence  
8 previously collected by Plaintiff’s expert from the fire scene and from the subject recreational  
9 vehicle owned by Plaintiff’s insureds before Norcold was put on notice of the fire loss.

10 5. On July 28, 2021, a one-day laboratory materials examination of the previously  
11 collected evidence was conducted.

12 6. Attached to the Motion as **Exhibit A** is a true and correct copy of excerpts from  
13 the deposition transcript from the Rule 30(b)(6) deposition of Plaintiff, taken on October 5,  
14 2023, in this lawsuit. Highlighting has been added to the excerpts to mark the testimony referred  
15 to in the Motion.  
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17 7. Attached to the Motion as **Exhibit B** is a true and correct copy of Plaintiff’s  
18 Responses to Norcold’s First Requests for Admission, which were served on May 30, 2023.

19 8. Attached to the Motion as **Exhibit C** is a true and correct copy of an estimate  
20 for the demolition of Plaintiff’s insureds’ building and removal of debris, dated March 9, 2021,  
21 which was produced by Plaintiff in this lawsuit with the bates-stamp “PLAINTIFF 000115 –  
22 PLAINTIFF 000116.”  
23

24 9. Attached to the Motion as **Exhibit D** is a true and correct copy of excerpts from  
25 the deposition transcript from the oral deposition of Scott Roberts, taken on October 15, 2024,  
26

1 in this lawsuit. Highlighting has been added to the excerpts to mark the testimony referred to in  
2 the Motion.

3  
4 I declare, under penalty of perjury under the laws of the United States, that the foregoing  
5 is true and correct. Executed this 28th day of October, 2024, at Houston, Texas.  
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7  
8 /s/ Todd M. Foss  
9 Todd M. Foss  
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